



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/895,674	06/28/2001	Andrzej Fertala	DRE-0032	6795

26259 7590 02/11/2003

LICATLA & TYRRELL P.C.
66 E. MAIN STREET
MARLTON, NJ 08053

EXAMINER

WITZ, JEAN C

ART UNIT	PAPER NUMBER
----------	--------------

1651

DATE MAILED: 02/11/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/895,674

Applicant(s)

FERTALA ET AL.

Examiner

Jean C. Witz

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 November 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) 5-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Priority

This application filed under former 37 CFR 1.60 lacks the necessary reference to the prior application. The reference to the PCT application is incomplete because the number of the PCT application is not present.

Election/Restrictions

Applicant's election with traverse of Group I, claims 1-4 in Paper No. 8 is acknowledged. The traversal is on the ground(s) that there is no serious burden on the Examiner to search both inventions based upon the same classification for both inventions. This is not found persuasive because the burden of search on the Examiner is not merely limited to a patent search of class and subclass, but also requires an extensive search of multitudinous and varied electronic databases. As stated in the previous office action, the inventions of Groups I and II are related as product and process of making. As the product as claimed may be made by a materially different process, restriction is proper. Further, a search of the product would be considerably different than that for the process because said search would not be co-extensive. Therefore, the burden on the Examiner to search both inventions is deemed to be consistent with the statute permitting the Examiner to require restriction between the two inventions.

The requirement is still deemed proper and is therefore made FINAL.

Claims 5-8 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by either Vacanti et al. (5,759,830) or Bell (WO 0023008).

Claim 1 recites a tissue engineering scaffold comprised of collagen or a collagen-like peptide incorporated within or between polymeric fibers. Claims 2-3 further defines the collagen-like peptide.

Vacanti et al. (5,759,830) disclose a cell scaffold composed of hollow or solid fibers of a biocompatible, synthetic polymer which is biodegradable or non-biodegradable. The fibers may be coated with collagen II. Since the coating of the polymer would render the collagen to be placed between the polymeric fibers, the references are deemed to anticipate the claim.

Bell (WO 0023008) disclose cardiovascular prostheses formed from woven biodegradable polymer fibers. These fibers can be made of one or more biopolymers. At page 6, a fiber composed of laminin and type IV collagen is disclosed. At page 7,

Art Unit: 1651

collagen or combinations of collagen types can be used. Collagen type II is specifically identified as one of types of collagens to be used in the prosthesis. Therefore, collagen type II is disclosed as being incorporated within the fiber. Broadest reasonable interpretation of claim 3 renders a collagen-like peptide comprising amino acids 703-936 to be any peptide containing said amino acid sequence. Human collagen type II is such a peptide. Therefore, the reference anticipates the claims.

Allowable Subject Matter

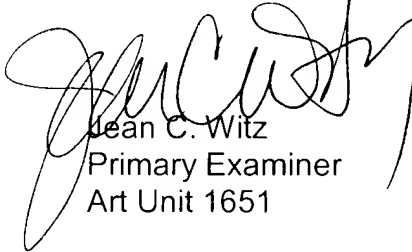
Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jean C. Witz whose telephone number is (703) 308-3073. The examiner can normally be reached on 6:30 a.m. to 4:00 p.m. M-Th and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on (703) 308-4743. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9307 for After Final communications.

Art Unit: 1651

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.



Jean C. Witz
Primary Examiner
Art Unit 1651